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| 09/980,084      | 05/02/2002  | Andrew Laitt         | 000026.00031        | 8099             |

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| EXAMINER |
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DESAI, HEMANT

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| ART UNIT | PAPER NUMBER |
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3721

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/980,084

Applicant(s)

LAITT, ANDREW

Examiner

Hemant M. Desai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/22/2005 (amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20, 22, 27 and 30-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22, 27 and 30-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-20, 22, 27, 30-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The following subject matter is new matter, which was not described, in the originally filed specification:

“wherein....pattern.” (claim 1, lines 13-16).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “arranged substantially transverse “ is vague, confusing and misleading because it is not clear that pouches should be transverse with respect to which direction or axis.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-16, 22, 27, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman (2835596) in view of Davy (3199756).

Kaufman discloses a method of packaging food-stuff (12, figs. 1-2) comprising the steps of forming a tube (10, figs. 1, 2-5) having a pre-determined cross-sectional shape and area (see col. 3, lines 34-38), forming a first seal (11, figs. 2-3) at a lower end of the tube, feeding a pre-determined amount of the food-stuff (see col. 3, lines 34-38) to be packaged into the tube, forming a second seal (16, figs. 2-3) in the tube at a pre-determined distance above the first seal (11) to form a sealed pouch of pre-determined dimensions and pre-determined volume containing the food-stuff, each pouch having at least one long side face which is as long as or longer than all other faces of the pouch (see figs. 1-4), and inserting the sealed pouches in a carton (19, fig. 5), wherein the bulk volume of the predetermined amount of foodstuff fed into each pouch is less than the pre-determined volume of each sealed pouch (see col. 3, lines 34-38), so that when each pouch is sealed, each pouch contains the desired quantity of food-stuff, as well as a pre-determined amount of air so that if a sealed pouch is placed on said long side face (see figs. 3-4) a layer of air is formed above the foodstuff (see col. 2, lines 63-72; col. 3, lines 1-2).

Kaufman, as mentioned above discloses all the claimed limitations except for forming a strip of sealed pouches and inserting the strip into a carton. However, Davy teaches to form a strip of sealed pouches (see figs. 4-5) and inserting the strip into a carton (E, fig. 5) so that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery (see col. 1, lines 20-27). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strip of sealed pouches and inserting the strip into a carton as taught by Davy in the method of packaging food-stuff of Kaufman so that that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery.

Regarding claims 2-3, the modified method of Kaufman discloses that the strip of pouches is arranged substantially upright or transverse in the carton (see fig. 5).

Regarding claims 4-6, the modified method of Kaufman teaches to insert strip of pouches into a carton, but does not disclose expressly that at least two strips of sealed pouches should be arranged in a carton.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to arrange at least two strips of sealed pouches in a carton because Applicant has not disclosed that by arranging two strips of sealed pouches in a the carton provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the way Kaufman

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discloses to insert the strip of pouches into a carton because both arrangements would perform equally well as far as the packaging of the sealed strip of pouches in the carton is concerned.

Therefore, it would have been an obvious matter of design choice to modify Kaufman to obtain the invention specified in claims 4-6.

Regarding claims 7-8, Kaufman discloses that at least one pleat is formed in the tube (see fig. 1).

Regarding claim 9, Kaufman discloses that the pouches are substantially the same size.

Regarding claims 10-11, for the same reasons, as mentioned above it would have been obvious matter of design choice to modify Kaufman to obtain the invention specified in claims 9-11.

Regarding claims 12-13, Kaufman discloses that the sealing is by means of heat (see col. 3, lines 28-32).

Regarding claim 14, Kaufman discloses that the tube is formed of plastic material (see col. 3, lines 24-26).

Regarding claim 15, Kaufman discloses plastic tube material. Kaufman does not disclose expressly the waxed paper. However, it is obvious to one having ordinary skill in the art at the time the invention was made to use the plastic or waxed paper for their use in packaging the foodstuff to make the package moisture resistant. Applicant did not seasonally challenge the holding of Official Notice of use of waxed paper, and therefore the limitation in the claim is now deemed Admitted Prior Art.

Regarding claim 22, the packaged brittle foodstuff produced by the method.

Regarding claim 27, Davy teaches that the strip of filled pouches is folded at points between the pouches (see fig. 5) to insert the strip in the box in zigzag pattern. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the method of packaging food-stuff of Kaufman to fold the strip of filled pouches at points between the pouches to insert the strip in the box in the zigzag pattern.

Regarding claim 31, Kaufman discloses the step of determining the pre-determined volume of food-stuff, determining the predetermined volume of the sealed pouches, so that the predetermined volume of the sealed pouches is greater than the predetermined volume of food-stuff and so that, when the pouch is placed on its side, a layer of air is formed above the food-stuff determining the predetermined shape and the predetermined distance between the first and second seal from said predetermined volume (see col. 3, lines 25-38, figs. 3-5).

Regarding claim 32, the modified strip of pouches is arranged transversely with respect to the flap 22, fig. 5.

7. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman and Davy as applied to claim 1 above, and further in view of Warp (3194124).

The method of packaging foodstuff of Kaufman as modified by Davy meets all the claimed limitations of claim 1, except for line the of perforations formed between each pouch of the strip of the pouches. However, Warp teaches a line of perforation (41, fig. 2) formed between each pouch (14, fig. 2) of the strip of the pouches to tear

across the strip along the line defined by the perforations (41) to separate the end bag from the remainder of the strip (see col. 3, lines 3-6). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the line of perforations formed between each pouch of the strips of the pouch as taught by Warp in the strip of pouches of Kaufman as modified by Davy to separate the end bag from the remainder of the strip.

### ***Response to Arguments***

8. Applicant's arguments filed 4/22/2005 have been fully considered but they are not persuasive. Applicant's argument regarding claim 26 is moot since claim 26 has been cancelled.

In response to applicant's argument that the bags of Kaufman are not made from a continuous tube so that a strip of connected bags is created. Note that Examiner is relying on Davy ('756) reference to make the strip of pouches, fold it in zigzag fashion (fig. 5) and insert the folded strip of pouches in the box so that the container serves a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery. Davy is folding a pre-determined length of the strip of connected bags (by severing it with cut-off mechanism F, fig. 5) and inserting the folded strip in the box (see fig. 5). It is obvious to one having ordinary skill in the art at the time the invention was made to fold the strip and then insert the folded strip into carton. Davy teaches to insert the folded strip into the carton in the space-filling pattern since the folded strip filled the space of the carton. Regarding Applicant's arguments on page 8-9, as explained above, the modified strip of



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connected pouches of Kaufman meets all the claimed limitations of claim 1. Regarding claim 17, the modified method of packaging of Kaufman meets the limitation of claim 17 as explained in the above rejection. Regarding claim 30, Davy teaches to pack loose particles or pieces of flaky or granular character and that could be very well breakfast cereal.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 7:00 AM-5:30 PM, Mon-Thurs..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai  
Examiner  
Art Unit 3721

HMD



**Stephen F. Gerrity**  
**Primary Examiner**

571-272-4460